



MAR 7 2006

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR DAVID CAPITANO

DIRECTOR

DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

Ralph J. Destefano
for

RALPH J. DESTEFANO

DIRECTOR

REGULATORY AND FEDERAL ASSISTANCE
DIVISION

SUBJECT:

FAR Case 2005-022, Exception from Buy American Act for
Commercial Information Technology

Attached are comments received on the subject FAR case published at 71 FR 223;
January 3, 2006. The comment closing date was March 6, 2006.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2005-022-1	03/02/06	03/02/06	DOD/IG
2005-022-2	03/06/06	03/06/06	CDW-G

Attachments



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

2005-022-1

MAR - 2 2006

Ms. Laurieann Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

We reviewed Federal Acquisition Regulation (FAR) Case No. 2005-022, an interim rule which authorizes an exemption from the Buy American Act for acquisitions of commercial information technology. This exemption should not apply to the Department of Defense due to the security risk associated with foreign entities potentially gaining access to Department of Defense information systems. We have included suggested changes to the interim rule as an enclosure.

Thank you for the opportunity to comment on the interim rule. If you have any questions, please contact Mr. Mark Dixon at (703) 604-8755.

Patricia A. Brannin
Assistant Inspector General
for Audit Policy and Oversight

Enclosure:
As stated

cc: DAR Council
DIG-P&O (e-mail)

2005-022-1

Inspector General of the Department of Defense
Comments of Federal Acquisition Regulation
Case No. 2005-022
"Exception from Buy American Act for Commercial
Information Technology"

Recommended changes are shown in red and underlined for additional language.

1. FAR 25.103(e), "Information technology that is a commercial item."

For agencies other than the Department of Defense, the restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

2. FAR 25.1101, "Acquisition of Supplies."

The following provisions and clauses apply to the acquisition of supplies and acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if--

(i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability, public interest, or information technology that is a commercial item if the contract is awarded by an agency other than the Department of Defense); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225-2, Buy American Act Certificate, in solicitations containing the clause at 52.225-1.

(b)(1)

(i) Insert the clause at 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act, in solicitations and contracts if --

2005-022-1

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$193,000;

(B) For agencies other than the Department of Defense, the acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

(C) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.



2005-022-2

March 6, 2006

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Via Facsimile (202) 501-4067
General Services Administration
ATTN: Laurieann Duarte
Regulatory Secretariat (VIR),
1800 F Street, NW, Room 4035,
Washington, DC 20405.

Re: FAC 2005-07, FAR case 2005- 022 (FAR Case 2005-022, Exception from Buy American Act for Commercial Information Technology (Federal Register Document - Interim Rule)

Dear Ms. Duarte,

CDW Government, Inc. ("CDW-G") appreciates the opportunity to comment on the proposed rule published in the January 3, 2006 edition of the Federal Register 48 CFR 25 for FAR Case 2005-022, Exception from Buy American Act for Commercial Information Technology. In the proposed rule, DOD, GSA and NASA are seeking information that will assist it in evaluating a proposed exception to the Buy American Act (BAA) in procurements subject to the Trade Agreements Act (TAA) for commercial U.S. made end products.

The proposed rule establishes that the Buy American Act, 41 USC 10a et seq. ("BAA") is not applicable to the acquisition of COTS IT items. CDW-G supports the proposed rule, and believes the FAR provision eliminating the applicability of the BAA to the acquisition of COTS IT is a first step in allowing the Government to obtain the most innovative technology at a lower price; the price the same product is available to non-Government procurement. The rule should result in the elimination of time consuming and expensive compliance measures that increase the cost of COTS IT products from contractors, that are then passed on to the Government, while increasing variety of available products available to the federal Government.

The elimination of the BAA will not eliminate all trade agreement restriction from Government procurements. The proposed rule is effective up to purchases of \$193,000 (for fy 2006). The Trade Agreements Act, 19 USC 2512, et seq. still applies to procurements over \$193,000. Thus the proposed rule is a first step that allows the Government to more easily purchase, cheaper products for smaller procurements.

Certain Government agencies have bypassed the BAA and TAA through various interpretations of the confusing rules, or have or found ways to circumvent them either from approved exceptions or not following the requirements. These actions reduce the

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2005-022-2

government's purchasing power and create inconsistency in terms and conditions. The applicability of the TAA forces the Government to order outside its own established contracts in order to obtain the COT IT they desire at the commercial rate.

For CDW-G, the proposed rule represents a positive step in allowing the Government access to the same COT IT used by the rest of the world, at commercially competitive prices. While the proposed rule would only be effective up to purchases of \$193,000 (for FY 2006) CDW-G views this as a positive first step in recognizing the Government's need for quicker, cheaper access to COTS IT.

If you have any questions, please feel free to contact me at 703.621.8255.

Sincerely,

Kevin P. Adams
Kevin P. Adams (By *HH*)
VP Program Sales, CDW Government, Inc.